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December 21, 2020

The application is **GRANTED**. Because Plaintiff bears the burden of proof and Defendants' experts may rebut testimony Plaintiff's experts provide during a deposition, the parties shall reschedule the depositions of Defendants' expert witnesses to dates after the deposition of Dr. Davidson.

VIA ECF FILING ONLY

Hon. Lorna G. Schofield, U.S.D.J.
United States District Court, SDNY
500 Pearl Street
New York, NY 10007

Dated: December 22, 2020
New York, New York

Re: Powers v. Memorial Sloan Kettering Cancer Center, et al.
Docket No. : 1:20-cv-02625



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Dear Judge Schofield:

In accordance with the Court's Order (Doc. 154), on December 18, 2020, Defendants notified Plaintiff that Defendants' experts' depositions will be re-scheduled to dates after February 10, 2021, unless Dr. Davidson could be made available for his deposition by January 10, 2021 (or any other date prior to the start of defendants' depositions). Notwithstanding the Court's Order, Plaintiff responded that this was unacceptable and refused to schedule depositions of Plaintiff's Expert Dr. Davidson prior to Defendants' experts, and indicated he required Court intervention before he would agree to do so. (**Exhibit "A"**).

In granting an extension of expert discovery to February 28, 2021, the Court's Order endorsed the following:

Expert discovery is extended to allow for the deposition of plaintiff's expert, Dr. Davidson, to be held on February 10, 2021 or any date prior to the first defense expert deposition. The Court recognizes that the pandemic has caused difficulties for healthcare providers, such that expert discovery is extended to February 28, 2021 to allow for defendants' experts to be deposed after Dr. Davidson. (Doc. 154).

Defendants' respectfully seek the Court's guidance to resolve this issue, and prevent Plaintiff from apparently claiming some special treatment for Dr. Davidson.

Respectfully submitted,

KAUFMAN BORGEEST & RYAN LLP

/s/ Betsy D. Baydala

Betsy D. Baydala

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cc: via ECF filing

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Exhibit

“A”

Defendants’ Response in Opposition December 21, 2020
1:20-cv-02625

Betsy D. Baydala

From: Scott Hendler <shandler@hundlerlaw.com>
Sent: Friday, December 18, 2020 8:20 PM
To: Betsy D. Baydala
Cc: Rebecca Webber; Laura Goetsche; Amanda Rosenfeld; Lakyn Segovia
Subject: Re: Powers (Zak) v. MSK - Expert Depositions

That's unacceptable. The Court did not rule that all Plaintiff's witnesses must testify before any defense witness. Your witnesses have been noticed for deposition and you have no authority to unilaterally cancel and reschedule them. We intend to proceed as noticed.

Scott Hendler

CEO and Managing Partner

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The original image contains a redacted rectangular area with a small red 'X' icon in the top-left corner. The text 'The original image contains a redacted area.' is visible at the bottom of the redaction box.

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Sent from my iPhone so please excuse errors and typos from autocorrect (and clumsy thumbs).

On Dec 18, 2020, at 5:16 PM, Betsy D. Baydala <bbaydala@kbrlaw.com> wrote:

Counselors,

In accordance with the Court's Order from today (Doc. 154), we will be re-scheduling Defendants' expert depositions of Drs. Bernstein, Fischman, Goldberg, and Rubinson to dates after February 10, 2021.

If Dr. Davison is available to be deposed on or before January 10, 2021 please advise as soon as possible. Thank you.

Regards,
Betsy

Betsy D. Baydala | **KAUFMAN BORGEEST & RYAN LLP**
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<Doc. 154_Court's Order Granting Expert Extension 12.18.20.pdf>